

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

Claims 1-18 are pending in this application. By this Amendment, claims 1, 6, 10-13 and 15 are amended to clarify the recited features, and independent claims 17 and 18 are added. Support for the amendments to independent claim 1 and new claim 18 can be found, for example, in Fig. 2 and on page 7, line 26 to page 8, line 22 of the specification. Support for new claim 17 can be found on page 2, lines 2-6 and throughout the specification. No new matter is added.

I. Double Patenting Objection

The Office Action objects to claims 12-16 as being a substantial duplicate of claims 5 and 8-11, respectively. The objection is respectfully traversed.

The scope of claim 12 is different from the scope of claim 5 because claim 12 recites additional features not recited in claim 5. That is, the scope of claim 12 is narrower than the scope of claim 5. Thus, claim 12 is not a substantial duplicate of claim 5. In addition, the features of claim 12 are not recited in claims 8-11. Thus, the scope of each of claims 8-11 does not include the subject matter of claim 12. On the other hand, the scope of each of claims 13-16 incorporates the subject matter of intervening claim 12. Therefore, the scope of each of claims 8-11 is different than the scope of each of claims 13-16. Thus, although claims 5 and 8-11 and claims 12-16 may recite similar features, claims 12-16 are not substantial duplicates of claims 5 and 8-11. The Office Action cites MPEP §706.03(k) as a basis for the objection. However, §706.03(k) states that Applicant has the right to restate (i.e., by plural claiming) the invention in a reasonable number of ways, and that a difference in

scope between claims is an acceptable manner to do so. Such may be considered the case here. Accordingly, withdrawal of the objection is respectfully requested.

II. Claim Rejections over Junichi

The Office Action rejects claims 1 and 6-11 under 35 U.S.C. §102(b) or alternatively under 35 U.S.C §103(a) over Junichi et al. ("Junichi"), JP 2000-346524. The rejections are respectfully traversed.

Junichi does not disclose, and would not have rendered obvious, a wine storage apparatus comprising a temperature control device that controls a temperature of a wine storage compartment based on a **target** temperature, and that repeatedly raises and lowers the target temperature in the wine storage compartment in accordance with a preset cycle, a preset temperature band, and a preset variation pattern, as recited in independent claim 1. The inherent temperature changes alleged by the Examiner have nothing to do with a changing target temperature.

Junichi discloses a storage unit 1 including storing chambers 10-12 that are each equipped with a temperature regulating mechanism 20-22 (see Fig. 1 and Abstract). Junichi also discloses that wine 61 is stored in the storage unit 1 (see Fig. 1 and Abstract). Junichi further discloses that each storing chamber 10-12 is set to a temperature having a value in the range of 5 to 20°C (see Abstract). The Office Action asserts that each of the temperature regulating mechanism 20-22 corresponds to the claimed temperature control device, but acknowledges that Junichi fails to explicitly disclose that the temperature regulating mechanisms 20-22 repeatedly raise and lower the temperature in the storage unit 1 in accordance with a preset cycle, a preset temperature band, and a preset variation pattern. The Official Action asserts that these features (1) are inherent or (2) at least would have been

"an obvious choice" to one of ordinary skill in the art (see page 3 of the Office Action). Application respectfully disagrees with the Office Action's assertions.

First, to establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference. Inherency, however, may not be established by probabilities or possibilities and the mere fact that a certain thing *may* result from a given set of circumstances is not sufficient to establish the inherency of that result (MPEP §2112 IV). That is, there can be no speculation or mere possibilities involved in a holding of inherency. What is alleged to be inherent must necessarily occur. Here, the Office Action asserts that Junichi's temperature regulating mechanisms 20-22 may raise or lower the temperature of the storing chambers 10-12 back to the set temperature value if the temperature changes in response to fluctuations caused by, for example, opening the door 4 or other environmental conditions. Accordingly, the Office Action appears to assert that the fluctuations cause the temperature regulating mechanisms 20-22 to raise or lower the temperature according to a "preset cycle", i.e., when ever there is an environmental change in temperature, and according to "its allowance of variation" (see page 3 of the Office Action). However, there is no evidence that the alleged raising or lowering the temperature in Junichi occurs according to a preset variation *pattern*. That is, there is no evidence that Junichi's raising or lowering the temperature, as set forth by the Office Action, would occur other than at *random* (when the door 4 is opened or when ever there is an environmental change in temperature). Thus, the Office Action has not met its burden of making clear that the temperature regulating mechanisms 20-22 of Junichi necessarily repeatedly raise and lower the temperature in the storage unit 1 in accordance with a preset variation *pattern*.

Moreover, the assertion that the temperature regulating mechanisms 20-22 of Junichi repeatedly raise and lower the temperature in the storage unit 1 according to a preset cycle, a preset temperature band, and a preset variation pattern, is contrary to the teachings of Junichi and the knowledge of the those skilled in the art of storing and aging wine at the time of the invention. As discussed in the instant specification, it was commonly known to those skilled in the art to store wine at a *constant* temperature to avoid spoilage, and conventional wine cellars were provided with a temperature control function to prevent the temperature in a compartment from departing from a set temperature (see page 1, lines 9-17 and page 9, lines 4-7 of the specification). Indeed, Junichi teaches that the storing chambers 10-12 should be set at a constant temperature, being a value in the range of 5-20°C (see Abstract). Thus, the Office Action's position that the claim 1 features are inherent in Junichi is without factual support and is contrary to the teachings of Junichi and the knowledge of the those skilled in the art. Therefore, Junichi does not explicitly or inherently disclose all of the features recited in independent claim 1.

Second, it would not have been obvious to modify the temperature regulating mechanisms 20-22 to result in the combination of features recited in independent claim 1. In particular, there is inadequate evidence to support the Official Action's conclusion that it would have been obvious to one skilled in the art to modify the temperature regulating mechanisms 20-22 of Junichi to operate in accordance with a preset cycle, a preset temperature band, and a preset variation pattern. The Official Action merely states that the modification would have been "an obvious choice . . . since the same feature is inherently present in a temperature control system" (see page 3 of the Office Action). This conclusory statement is insufficient to support an obviousness rejection, particularly taking into account the Patent Office's

Examination Guidelines for Determining Obviousness Under 35 U.S.C. §103(a) in view of *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007). The Guidelines state that the Examiner should clearly articulate why the claimed invention would have been obvious. For example, the Supreme Court in *KSR* held that the Examiner "must [provide] some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" (*KSR*, 82 USPQ2d 1385, 1396 (2007)). In this case, it is not at all apparent why the stated modification would have been an "obvious choice" to an ordinarily skilled artisan, especially in view of the fact that it was common knowledge to those skilled in the art of wine storing and aging to store wine at a *constant* temperature to avoid spoilage. Further, simply because a feature is alleged to be inherent is not a proper basis for making an obviousness rejection. Moreover, as discussed above, at least the claimed preset variation pattern is not inherent in Junichi. Thus, the Official Action fails to explain, with articulated reasoning or rational underpinning, why it would have been obvious to modify the temperature regulating mechanisms 20-22 of Junichi to operate in accordance with a preset cycle, a preset temperature band, and a preset variation pattern. Simply because something could have been modified and a person of ordinary skill was capable of making the modification does not mean it would have been obvious to do so. Thus, there is inadequate evidence supporting the conclusion that it would have been obvious to modify the temperature regulating mechanisms 20-22 of Junichi to operate in accordance with a preset cycle, a preset temperature band, and a preset variation pattern, as recited in independent claim 1.

Further, modifying the temperature regulating mechanisms 20-22 of Junichi to operate in accordance with a preset cycle, a preset temperature band, and a preset variation pattern, would not have been obvious because the modification is contrary

to the teachings of Junichi and the conventional knowledge of the those skilled in the art of storing and aging wine. As discussed above, it was commonly known to those skilled in the art of storing and aging wine to store wine at a *constant* temperature to avoid spoilage, and conventional wine cellars such as Junichi's storage unit were provided with a temperature control function to prevent the temperature in a compartment from departing from a set temperature. One skilled in the art would not have been inclined to repeatedly vary the temperature of a Junichi's storage unit 1, as doing so would have resulted in spoilage of the wine based on the knowledge had by those skilled in the art at the time of the invention. The Office Action fails to consider the references and claims as a whole and relies on impermissible hindsight using knowledge gleaned only from Applicant's disclosure (see MPEP §2145(X)(A)). Thus, one skilled in the art would not have modified the temperature regulating mechanisms 20-22 of Junichi to repeatedly raise and lower the temperature in the storage unit 1 in accordance with a preset cycle, a preset temperature band, and a preset variation pattern, as recited in independent claim 1. Therefore, the combination of features recited in claim 1 would not have been obvious.

To clarify the recited features, claim 1 is amended to recite that the temperature control device controls a temperature of the wine storage compartment based on a target temperature, and repeatedly raises and lowers the target temperature in the wine storage compartment in accordance with a preset cycle, a preset temperature band, and a preset variation pattern. As discussed above, Junichi discloses setting the temperature in the storing chambers 10-12 to a *constant* temperature, being a predetermined value in the range of 5-20°C (see Abstract). The Office Action asserts that Junichi's temperature regulating mechanisms 20-22 may raise or lower the temperature of the storing chambers 10-12 if the temperature

changes in response to environmental fluctuations so that the temperature *returns to the back* to the predetermined value. To the extent that the predetermined value can be considered a target temperature, Junichi does not disclose repeatedly raising and lowering the predetermined value ("target temperature") in the wine storage unit 1. On the contrary, Junichi keeps the predetermined value ("target temperature") constant. Moreover, modifying Junichi to repeatedly raise and lower the predetermined value would have been contrary to the teachings of Junichi and the knowledge of those skilled in the art of storing and aging wine at the time of the invention, as discussed above.

Thus, independent claim 1 is patentable over Junichi.

Claims 6-11 are patentable over Junichi at least by virtue of their dependence from patentable independent claim 1. Thus, a detailed discussion of the additional distinguishing features recited in these dependent claims is not set forth at this time. Withdrawal of the rejections is respectfully requested.

III. Claim Rejections over Junichi and Kawai

The Office Action rejects claims 4, 5, 12, 13, 15 and 16 under 35 U.S.C. §103(a) over Junichi in view of Kawai et al. ("Kawai"), U.S. Patent No. 6,705,098. The rejection is respectfully traversed.

Because claims 4, 5, 12, 13, 15 and 16 incorporate the features of claim 1, and because Kawai fails to overcome the above deficiencies of Junichi, these claims also are patentable over the applied references for at least these reasons. Thus, a detailed discussion of the additional distinguishing features recited in these dependent claims is not set forth at this time. Withdrawal of the rejection is respectfully requested.

IV. Claims 2 and 3

Claims 2 and 3 are not rejected over Junichi and/or Kawai. Further, the features of these claims are not disclosed, and would not have been rendered obvious, by Junichi and/or Kawai. Thus, claims 2 and 3 are patentable over the applied references for at least these reasons, as well as by virtue of their dependence from patentable claim 1.

V. New Claims 17 and 18

Independent claims 17 and 18 are presented for consideration. Independent claim 17 is similar to claim 1 and recites that the temperature control device repeatedly raises and lowers the target temperature in the wine storage compartment in accordance with a preset cycle relating to wine aging, a preset temperature band relating to wine aging, and a preset variation pattern relating to wine aging. These features are not disclosed or suggested by Junichi for at least the reasons discussed above. Thus, independent claim 17 is patentable over Junichi for at least these reasons.

Independent claim 18 recites that the temperature control device repeatedly raises and lowers the target temperature in the wine storage compartment in accordance with a preset cycle of time during which the temperature is controlled according to a variation pattern of multiple different temperature gradations within a preset temperature band. Junichi fails to disclose or suggest controlling the temperature of the storing chambers 10-12 according to a variation pattern of multiple different temperature gradations within a preset temperature band. Thus, independent claim 18 is patentable over Junichi for at least this reason.

VI. Conclusion

In view of the above, withdrawal of the objection and rejections is respectfully requested.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,

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